

**ARKANSAS COURT OF APPEALS**DIVISION IV  
No. CA 08-686

MARTHA HALE

APPELLANT

V.

EAST POINSETT SCHOOL DISTRICT  
and RISK MANAGEMENT  
RESOURCES

APPELLEES

**Opinion Delivered** MAY 27, 2009APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION, [NO. F613963]

AFFIRMED

**JOHN B. ROBBINS, Judge**

Appellant Martha Hale worked as a custodian for appellee East Poinsett County School District from 1995 through August 2006. Ms. Hale filed a workers' compensation claim against the appellee, alleging that she sustained two work-related low-back injuries occurring sometime in June and July 2006. After a hearing, the administrative law judge found that Ms. Hale failed to meet her burden of proving a compensable injury. Specifically, the ALJ determined that Ms. Hale did not establish any low-back injury arising out of the course of her employment, identifiable by time and place of occurrence, as required by Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2007). The Workers' Compensation Commission affirmed and adopted the decision and findings of the ALJ.

Ms. Hale, appearing pro se, now appeals from the Commission's decision denying benefits. She essentially challenges the sufficiency of the evidence. Ms. Hale also asserts that the ALJ did not give her the right to speak or defend herself. We affirm.

When an appeal is taken from the denial of a claim by the Workers' Compensation Commission, the substantial-evidence standard of review requires that we affirm the decision if the Commission's opinion displays a substantial basis for the denial of relief. *McDonald v. Batesville Poultry Equip.*, 90 Ark. App. 435, 206 S.W.3d 908 (2005). In determining the sufficiency of the evidence to support the findings of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if those findings are supported by substantial evidence. *Id.* Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* It is the Commission's function to determine the credibility of witnesses and the weight to be given their testimony. *Whitten v. Edward Trucking/Corporate Solutions*, 87 Ark. App. 112, 189 S.W.3d 82 (2004).

Ms. Hale was the only witness to testify at the hearing. Ms. Hale testified that on some day in June 2006, she was carrying a teacher's desk with her co-workers when the co-workers dropped their end too quickly. Ms. Hale further testified that, on an unspecified day in July 2006, she was buffing a floor and the buffer got hung on a screw, causing her to be thrown to the floor. Ms. Hale stated that both of these episodes resulted in back pain, for which she has sought medical treatment. She testified that she quit her job in August 2006, and asserted that she remains unable to work due to her medical condition.

The Commission did not credit Ms. Hale's testimony, and we are bound by its credibility determination on appeal. The Commission noted that there was a lack of evidence to corroborate Ms. Hale's accounts of her alleged injuries, and that there was contradictory medical evidence. Upon review of the record, we hold that the Commission's opinion displays a substantial basis for denying compensability.

As the Commission stated, Ms. Hale did not make a written report of any injury until months after the alleged accidents occurred. Moreover, she could not identify the specific date of either injury.

In Ms. Hale's testimony she asserted that she visited Dr. Kimitaka Saito on July 18, 2006, and reported the two work-related incidents causing her back pain. However, Dr. Saito's clinic notes from that date do not document any accidents or back problems, but instead document complaints of sinus pain and chest congestion. The first documentation of any lower back pain was in Dr. Saito's report on August 30, 2006, but that report specifically noted no history of injury, and indicated that the pain began on August 26, 2006, and worsened on August 29, 2006. Moreover, an emergency room record dated August 31, 2006, recites that Ms. Hale complained of lower back pain, but that there was no known injury and that the pain started "Sunday a.m. and has gotten worse." Finally, on January 29, 2007, Dr. Terence Braden reported that Ms. Hale has a uterine enlargement condition, and that there was no evidence of any other abnormality that could explain her pain in the sacroiliac region. Viewing the evidence and all reasonable inferences in the light most

favorable to the Commission's findings, there is substantial evidence to support the Commission's decision.

As for Ms. Hale's claim that the ALJ did not give her the right to speak or defend herself, this argument was not raised before the ALJ or Commission, and is thus not preserved for review. *See Goodwin v. Phillips Petroleum Co.*, 72 Ark. App. 302, 37 S.W.3d 644 (2001). Nonetheless, our review of the record indicates that the ALJ afforded Ms. Hale the opportunity to fully present her testimony in relation to her workers' compensation claim.

Affirmed.

VAUGHT, C.J., and KINARD, J., agree.